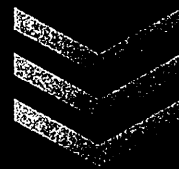


# Ombudsman for Property Rights



Author: [illegible]

The use of former lawman in the state in Wisconsin

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PROPERTY  
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LEGISLATIVE LIBRARY  
STATE OF WISCONSIN

MO DOC  
Econ Dev

3

2009

Office of Ombudsman for  
Property Rights: Tom  
Green

DED

1. A statement of the legal value of the property.
2. The purpose or purposes for which the property is to be acquired.
3. A statement that the property owner has the right to:
  - a. Seek legal counsel at the owner's expense;
  - b. Make a counteroffer and engage in further negotiations;
  - c. Obtain such owner's own appraisal of just compensation;
  - d. Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
  - e. Seek assistance from the office of the ombudsman for property rights;
  - f. Contest the right to condemn in the condemnation proceeding; and
  - g. Exercise the rights to request vacation of an easement under the procedures and circumstances provided for in Section 3 of this act.

An owner may waive the requirements of this subsection prescribed above in a writing executed by the owner.

## [OMBUDSMAN FOR PROPERTY RIGHTS]

The use of Eminent Domain in the state of Missouri

**Landowner Bill of Rights**  
**Adapted from RSMo 523.250**

At least **SIXTY** days before filing of a condemnation action petition seeking to acquire an interest in real property, the condemning authority shall provide the owner of record of such property with a written notice concerning the intended acquisition. Such notice shall include:

1. Identification of the interest in real property to be acquired and a statement of the legal description or commonly known location of the property.
2. The purpose or purposes for which the property is to be acquired.
3. A statement that the property owner has the right to:
  - a. Seek legal counsel at the owner's expense;
  - b. Make a counteroffer and engage in further negotiations;
  - c. Obtain such owner's own appraisal of just compensation
  - d. Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
  - e. Seek assistance from the office of the ombudsman for property rights;
  - f. Contest the right to condemn in the condemnation proceeding; and
  - g. Exercise the rights to request vacation of an easement under the procedures and circumstances provided for in Section 3 of this act.

An owner may waive the requirements of this subsection prescribed above in a writing executed by the owner.



## Introduction

This report will outline the creation of the Office of Ombudsman for Property Rights and the duties related to this office. I became the Ombudsman May 1<sup>st</sup>, 2009, so this report will be based on my time as the Ombudsman.

The controversial area of property rights and regulatory takings has created court battles between Property owners and condemning authorities, which has a mood of winner-take-all. The Missouri Legislature passed a new law in 2006, House Bill NO. 1944, the new law was based on recommendations from the Missouri Task Force of Eminent Domain. I will examine in this report if this new law has in fact improved the process and procedures of exercising eminent domain for the land owner and the condemning authority.

The Ombudsman is a full time position created to assist individuals seeking information regarding the condemnation process and procedures. I have worked on and will give a summary of each cases experience. This next year will be the standardizing of the office procedures and going to an electronic case file system, this will create an office system that anyone who becomes the Ombudsman in the future will be able to walk into a viable working office.

The Office of Ombudsman has an official website that can provide information about the eminent domain process to the landowner. The website was created in 2007 with the assistance of the Department of Economic Development, the website has several links of information on the topic of Eminent Domain. I have provided a Web Site Analytics Report that will show how this site has been helpful

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information when updating this web-site so that the information that people need is easy to find and updated.



## Executive Summary

I have traveled the state of Missouri meeting with the property owners who have sought assistance from the Office of Ombudsman. This office has been beneficial to the land owners because it provides assurance that there is someone they can bring their concerns to and that someone is monitoring the eminent domain process. The Office of Ombudsman is going to bring on an electronic virtual rapid case filing system that is being programmed by the Department of Economic Development. This will help monitor all aspects of the Eminent Domain process and will make reporting more efficient. I have become a board member of the United States Ombudsman Association; this has provided valuable information on setting up a new Ombudsman Office and also networking with other Ombudsmen. I am also a member of the National Right Away Association which has given this new office helpful information. The goal of this office will be to assist the property owners with all the information they need and to help resolve their disputes if possible.

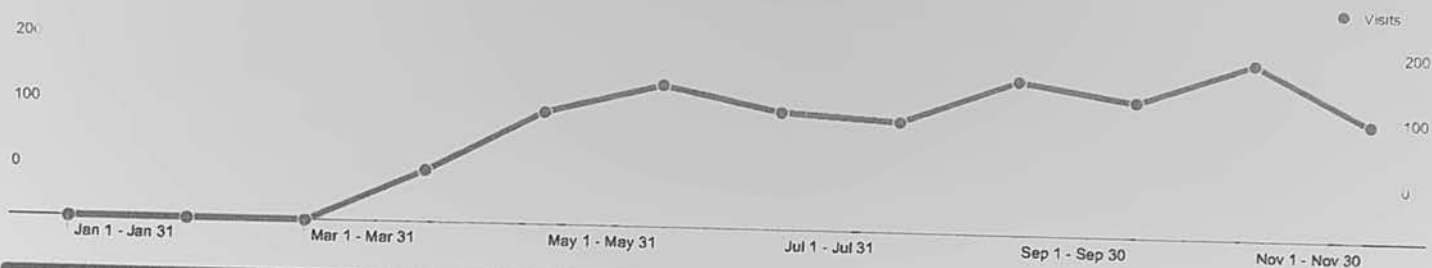
## Website

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## Dashboard

Jan 1, 2009 - Dec 31, 2009

Comparing to Site



## Site Usage

1,139 Visits

59.44% Bounce Rate

2,701 Pageviews

00:02:29 Avg. Time on Site

2.37 Pages/Visit

78.31% % New Visits

## All Traffic Sources

Source/Medium	Visits	% visits
google / organic	572	50.22%
yahoo / organic	159	13.96%
(direct) / (none)	140	12.29%
mo-opc.org / referral	110	9.66%
bing / organic	62	5.44%

## Content Overview

Pages	Pageviews	% Pageviews
/	829	30.69%
/faq.htm	708	26.21%
/about.htm	320	11.85%
/resources.html	289	10.70%
/blighted.htm	282	10.44%

## Top Content

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/blighted.htm	282	10.44%

## New vs. Returning

Visitor Type	Visits	% visits
New Visitor	892	78.31%
Returning Visitor	247	21.69%

## Languages

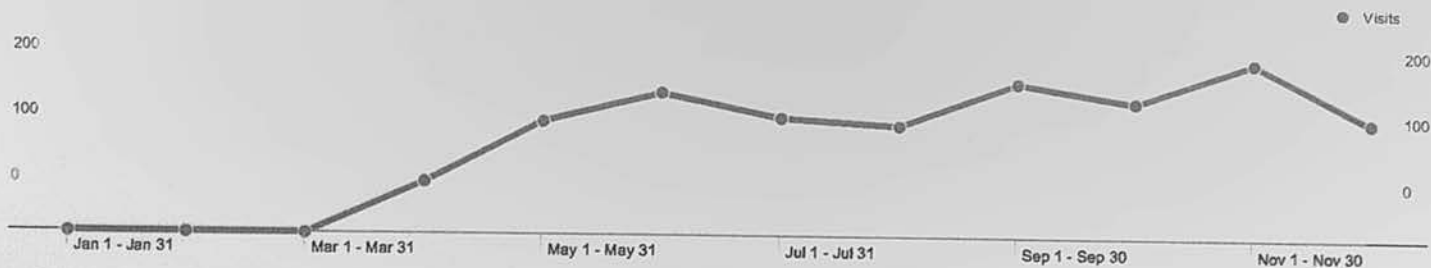
Language	Visits	% visits
en-us	1,116	97.98%
en	12	1.05%
tr	4	0.35%
es	3	0.26%
nl	2	0.18%



Autobots are ranked 1-100 with 100 being the highest and 1 being the lowest.

Rank	Pageviews	Avg. Time on Site	% New Visits	Source Page
1. 100	2.37	00:02:29	75.31%	50.44%
2. 100	2.37	00:02:29	75.31%	50.44%
3. 100	2.37	00:02:29	75.31%	50.44%
Rank	Pageviews	Avg. Time on Site	% New Visits	Source Page
4. 100	2.37	00:02:29	75.31%	50.44%
5. 100	2.37	00:02:29	75.31%	50.44%
6. 100	2.37	00:02:29	75.31%	50.44%
7. 100	2.37	00:02:29	75.31%	50.44%
8. 100	2.37	00:02:29	75.31%	50.44%
9. 100	2.37	00:02:29	75.31%	50.44%
10. 100	2.37	00:02:29	75.31%	50.44%
11. 100	2.37	00:02:29	75.31%	50.44%
12. 100	2.37	00:02:29	75.31%	50.44%
13. 100	2.37	00:02:29	75.31%	50.44%
14. 100	2.37	00:02:29	75.31%	50.44%
15. 100	2.37	00:02:29	75.31%	50.44%
16. 100	2.37	00:02:29	75.31%	50.44%
17. 100	2.37	00:02:29	75.31%	50.44%
18. 100	2.37	00:02:29	75.31%	50.44%
19. 100	2.37	00:02:29	75.31%	50.44%
20. 100	2.37	00:02:29	75.31%	50.44%





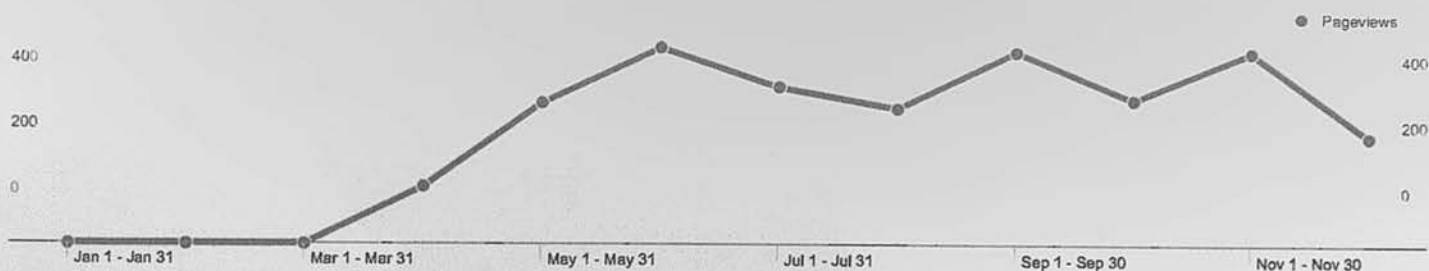
**All traffic sources sent 1,139 visits via 41 sources and mediums**

Site Usage

<b>Visits</b> <b>1,139</b> % of Site Total: <b>100.00%</b>	<b>Pages/Visit</b> <b>2.37</b> Site Avg: <b>2.37 (0.00%)</b>	<b>Avg. Time on Site</b> <b>00:02:29</b> Site Avg: <b>00:02:29 (0.00%)</b>	<b>% New Visits</b> <b>78.31%</b> Site Avg: <b>78.31% (0.00%)</b>	<b>Bounce Rate</b> <b>59.44%</b> Site Avg: <b>59.44% (0.00%)</b>	
Source/Medium	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
google / organic	572	2.55	00:02:56	75.87%	54.55%
yahoo / organic	159	2.11	00:02:25	88.68%	68.55%
(direct) / (none)	140	2.24	00:02:31	70.71%	57.14%
mo-opc.org / referral	110	2.34	00:01:24	88.18%	68.18%
bing / organic	62	2.56	00:02:53	79.03%	61.29%
opc.mo.gov / referral	11	1.27	00:00:08	90.91%	72.73%
pikecountypropertyrights.org / referral	8	2.50	00:01:43	75.00%	37.50%
aol / organic	7	2.14	00:00:39	71.43%	85.71%
ask / organic	7	1.00	00:00:00	85.71%	100.00%
blog.castlecoalition.org / referral	6	2.67	00:01:24	83.33%	16.67%

1 - 10 of 41

1 - 10 of 41



12 pages were viewed a total of 2,701 times

#### Content Performance

Pageviews	Unique Pageviews	Avg. Time on Page	Bounce Rate	% Exit	\$ Index	
2,701	2,073	00:01:48	59.44%	42.17%	\$0.00	
% of Site Total: 100.00%	% of Site Total: 100.00%	Site Avg: 00:01:48 (0.00%)	Site Avg: 59.44% (0.00%)	Site Avg: 42.17% (0.00%)	Site Avg: \$0.00 (0.00%)	
Page	Pageviews	Unique Pageviews	Avg. Time on Page	Bounce Rate	% Exit	\$ Index
/	829	659	00:01:38	51.89%	52.83%	\$0.00
/faq.htm	708	585	00:02:45	74.27%	57.34%	\$0.00
/about.htm	320	223	00:01:22	40.00%	17.50%	\$0.00
/resources.html	289	197	00:02:42	45.45%	28.72%	\$0.00
/blighted.htm	282	205	00:00:53	41.38%	17.73%	\$0.00
/index.htm	267	198	00:01:22	64.00%	37.45%	\$0.00
/cache.aspx?q=missouri+eminent+domain&d=75913074115684&mkt=en-US&setlang=en-US&w=729eecbf,ee16d3b7	1	1	00:00:00	100.00%	100.00%	\$0.00
/cache.aspx?q=missouri+ombudsman&d=75913074115684&mkt=en-US&setlang=en-US&w=685711a0,ee16d3b7	1	1	00:00:00	100.00%	100.00%	\$0.00
/search?q=cache:1ZEGJhEJbGoJ:www.eminentdomain.mo.gov/+latest+eminent+domain+laws+in+mo&cd=2&hl=en&ct=clnk&gl=us	1	1	00:00:00	100.00%	100.00%	\$0.00
/search?q=cache:1ZEGJhEJbGoJ:www.eminentdomain.mo.gov/+what+is+eminent+domain+MO?&cd=1&hl=en&ct=clnk&gl=us	1	1	00:00:00	100.00%	100.00%	\$0.00

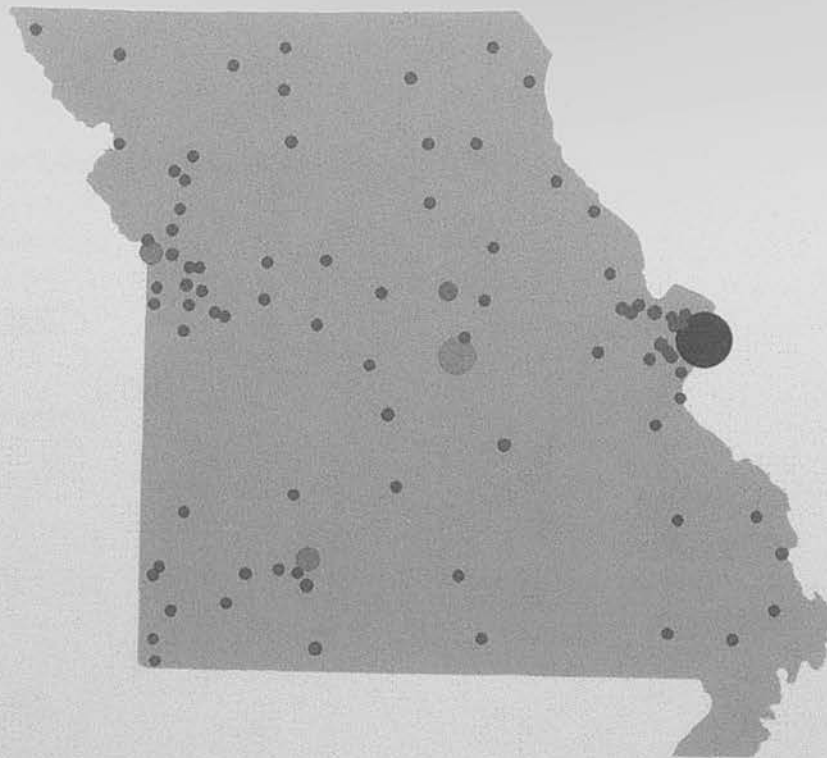
1 - 10 of 12

**State Detail:**

Missouri

Jan 1, 2009 - Dec 31, 2009

Comparing to: Site



Visits

1 227

**This state sent 777 visits via 87 cities****Site Usage****Visits****777**% of Site Total:  
68.22%**Pages/Visit****2.57**Site Avg:  
2.37 (8.44%)**Avg. Time on Site****00:02:52**Site Avg:  
00:02:29 (15.88%)**% New Visits****74.90%**Site Avg:  
78.31% (-4.36%)**Bounce Rate****54.18%**Site Avg:  
59.44% (-8.84%)**City****Visits****Pages/Visit****Avg. Time on Site****% New Visits****Bounce Rate**

St Louis

**227**

2.69

00:02:19

72.69%

51.54%

Jefferson City

**130**

2.42

00:02:06

65.38%

50.00%

Springfield

**63**

2.35

00:03:48

82.54%

58.73%

Kansas City

**62**

2.74

00:03:21

85.48%

64.52%

Columbia

**37**

1.95

00:01:45

75.68%

70.27%

Branson

**13**

2.00

00:01:16

76.92%

69.23%

St Peters

**13**

2.69

00:05:33

100.00%

61.54%

Ballwin

**12**

3.17

00:05:46

66.67%

25.00%

Maryland Heights

**11**

3.09

00:01:32

81.82%

45.45%



Pages on this site were viewed a total of 2,701 times

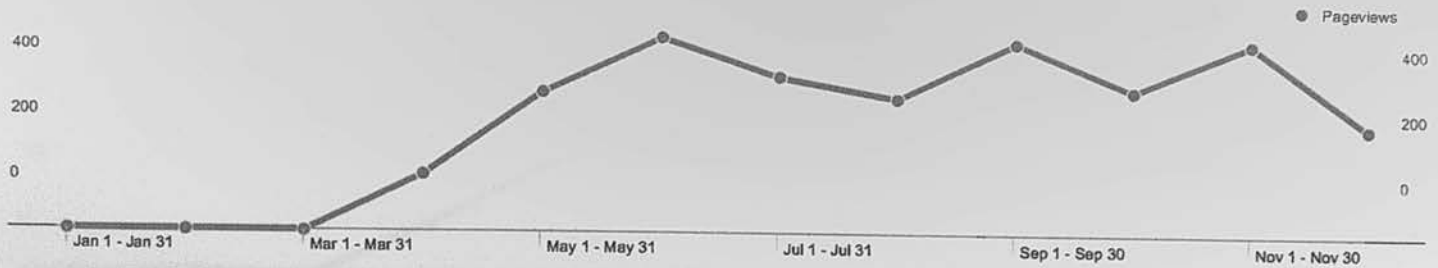
2,701 Pageviews

2,073 Unique Views

63.64% Bounce Rate

### Top Content

Page	Pageviews	% Pageviews
/	128	4.74%
/index.htm	100	3.70%
/about.htm	75	2.78%
/resources.htm	70	2.59%
/sitemap.htm	60	2.22%



**Pages on this site were viewed a total of 2,701 times**

**2,701 Pageviews**

**2,073 Unique Views**

**59.44% Bounce Rate**

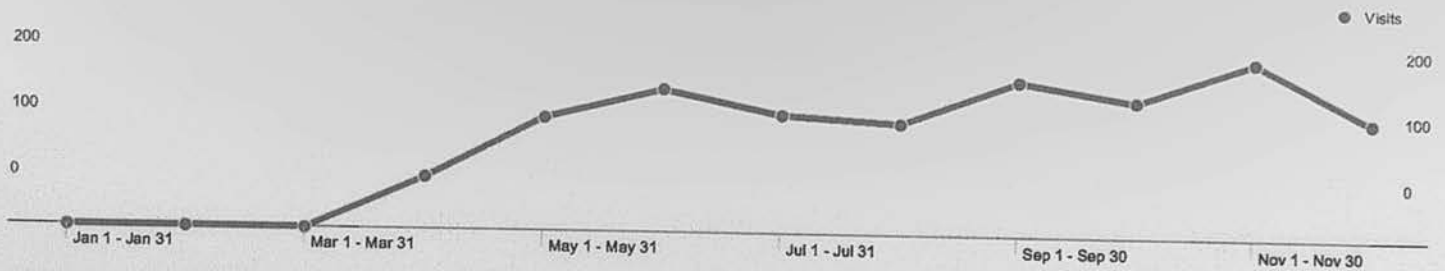
## Top Content

Pages	Pageviews	% Pageviews
/	829	30.69%
/faq.htm	708	26.21%
/about.htm	320	11.85%
/resources.html	289	10.70%
/blighted.htm	282	10.44%

## New vs. Returning

Jan 1, 2009 - Dec 31, 2009

Comparing to: Site



1,139 visits from 2 visitor types

## Site Usage

## Visits

1,139

% of Site Total:  
100.00%

## Pages/Visit

2.37

Site Avg:  
2.37 (0.00%)

## Avg. Time on Site

00:02:29

Site Avg:  
00:02:29 (0.00%)

## % New Visits

78.31%

Site Avg:  
78.31% (0.00%)

## Bounce Rate

59.44%

Site Avg:  
59.44% (0.00%)

## Visitor Type

Visitor Type	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
New Visitor	892	2.36	00:02:21	100.00%	62.22%
Returning Visitor	247	2.41	00:02:56	0.00%	49.39%

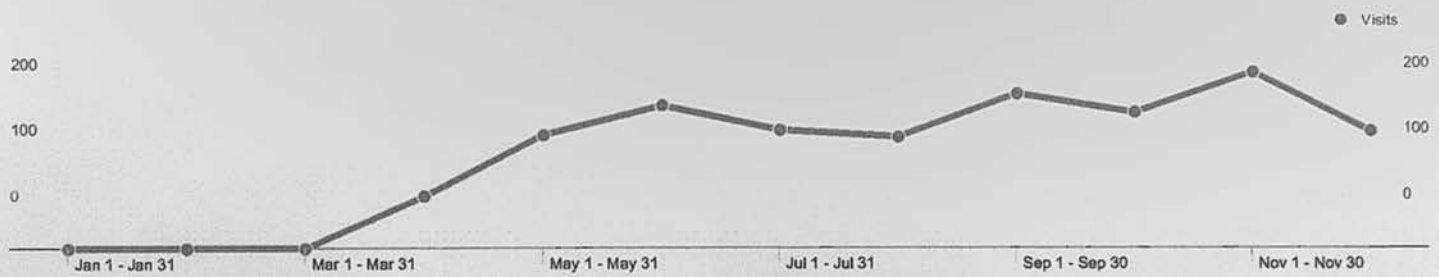
1 - 2 of 2



## Languages

Jan 1, 2009 - Dec 31, 2009

Comparing to Site



1,139 visits used 7 languages

## Site Usage

## Visits

1,139

% of Site Total:  
100.00%

## Pages/Visit

2.37

Site Avg:  
2.37 (0.00%)

## Avg. Time on Site

00:02:29

Site Avg:  
00:02:29 (0.00%)

## % New Visits

78.31%

Site Avg:  
78.31% (0.00%)

## Bounce Rate

59.44%

Site Avg:  
59.44% (0.00%)

Language	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
en-us	1,116	2.37	00:02:30	78.49%	59.32%
en	12	2.67	00:01:01	75.00%	58.33%
tr	4	2.00	00:00:57	25.00%	75.00%
es	3	3.33	00:03:54	66.67%	33.33%
nl	2	1.00	00:00:00	100.00%	100.00%
en-gb	1	1.00	00:00:00	100.00%	100.00%
zh-tw	1	1.00	00:00:00	100.00%	100.00%

1 - 7 of 7

**Country/Territory Detail:**

United States

Jan 1, 2009 - Dec 31, 2009

Comparing to: Site



This country/territory sent 1,111 visits via 41 regions

## Site Usage

Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate	
1,111	2.38	00:02:29	78.22%	59.14%	
% of Site Total: 97.54%	Site Avg: 2.37 (0.47%)	Site Avg: 00:02:28 (-0.11%)	Site Avg: 78.31% (-0.12%)	Site Avg: 59.44% (-0.51%)	
Region	Visits	Pages/Visit	Avg. Time on Site	% New Visits	Bounce Rate
Missouri	777	2.57	00:02:52	74.90%	54.18%
California	37	2.51	00:00:55	91.89%	64.86%
New York	28	1.71	00:01:42	89.29%	78.57%
District of Columbia	28	1.86	00:02:50	60.71%	64.29%
Texas	26	2.08	00:00:42	100.00%	76.92%
Illinois	24	1.67	00:00:32	91.67%	75.00%
Kansas	19	2.11	00:01:52	89.47%	68.42%
Florida	14	1.21	00:00:28	85.71%	78.57%
Virginia	13	3.54	00:01:14	76.92%	23.08%

## Office of the Ombudsman

The Missouri Office of the Ombudsman for Property Rights is charged with assisting citizens by providing guidance, which shall not constitute legal advice, to individuals seeking information regarding the condemnation process and procedures. The Ombudsman is also responsible for documenting the use of eminent domain within the state and any issues associated with its use and shall submit a report to the general assembly on January 1, 2009, and on such date each year thereafter.

The term ombudsman means people's advocate. In the public context, the Ombudsman is an official, appointed by the government, responsible for investigating and resolving complaints reported by citizens. The Ombudsman concept itself is a commonplace fixture in American governments, universities, and corporations. The Ombudsman is a full-time position within the Office of Public Counsel, and the offices are located in St. Louis. The Ombudsman is a neutral position, operating within – but independent of – a government agency, whose sole job is to answer questions from both owners and condemning authorities, and to help resolve property rights disputes.

I am usually contacted by the landowner after they have received a letter from the condemning authority stating that they want to acquire land from the owner. I then make a site visit to the land owner to explain the process of eminent domain. Occasionally, our job is simply the bearer of bad news. In such circumstances an owner may be upset to learn that their specific grievance is not actionable, but they At least feel confident that the law has been explained sufficiently by an informed and unbiased source.

After receiving the initial phone call and providing the appropriate information to the property owner, I contact the condemning authority and explained the new law to them and to bring the land owner's concerns to them for consideration. By



## Office of the Ombudsman for Property Rights

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After receiving the initial phone call and providing the appropriate information to the property owner, I contact the condemning authority and explained the new law to them and to bring the land owners concerns to them for consideration. By

increasing the flow of information and decreasing the hostility between the parties, I have enabled some parties to voluntarily resolve their disputes that arise during this process of eminent domain.

Property rights issues have been and will continue to be controversial. However, the wisdom of having a neutral third party to help advise and assist owners in achieving fair and equitable resolution of property acquisitions and also ensuring that the condemning authority obeys the law will help to resolve disputes.

### Use of Eminent Domain in Missouri

This report will document the cases of eminent domain that have contacted my office during my tenure as the Ombudsman for Property Rights. As reported by the previous Ombudsman Anthony Martin, the Courts Administrator compiles a database of court filings and produces an "annual report" that describes the types of cases filed in each circuit, and further broken down by county. This data base includes condemnation cases and exceptions filed, the only further breakdown of these cases concerns whether the particular condemning authority is either the "state" or "other." There is no further official Database describing each specific use of eminent domain. I will continue the work that was started by the previous Ombudsman of establishing a more detailed method for documenting the use of eminent domain in Missouri.

### Issues that often arise in condemnation of property

When a condemning authority begins the process of acquiring property for a public use their become issues that come into play for the authority and the property owner.



## Introductory Stage

The new law states that at least 60 days prior to initiating negotiations to acquire a property interest, the condemning authority must give a written notice to owner of record identifying the interest in real property to be acquired; the purpose for which the property is being condemned; and a statement of the property owner's rights: 1) the right to seek legal counsel, 2) to make a counteroffer and engage in negotiations, 3) to make a counteroffer and engage in negotiations, 4) to obtain the landowner's own appraisal, 5) to contest the condemnation proceeding, 6) to have just compensation determined preliminarily by a court-appointed condemnation commissioners and, ultimately, a jury.

Related Issues: I have experience property owners who become alarmed when they receive this notification from the condemning authority; there is a rush to judgment that they only have 60 days until they lose their property. Once I meet with them and explain the process and answer their questions they calm down.

## Negotiation Stage

The condemning authority must negotiate in good faith and their offer must be based on an appraisal. If this case goes to a condemnation hearing and it is determined by a judge that good faith negotiations have not taken place, the court must dismiss the condemnation petition and order the condemning authority to reimburse the owner for his or her actual reasonable attorney fees and cost.

Related issues: This negotiation stage happens before the condemnation hearing in an effort to resolve the dispute of just compensation. Just compensation must



be paid to a land owner in order for the condemning authority to take possession of the land. The financial amount to be paid to the land owner creates the most problems in this process. The issue of appraisals and how different the amounts from each appraisal are from the condemning authority and the land owners.

### **Condemnation Petition and Hearing Stage**

If negotiations fail, a condemning authority must prepare a Condemnation Petition and submit it to the courts. The next step is the Condemnation Hearing; this is where both sides will meet in a court room before a Judge. The new legislation passed as HB 1944 in August of 2006 ought to make these hearings a fertile ground for property owners to inquire of the governing authority that is forcefully acquiring their homes or their commercial property. Property owners can now insist on all the proof of a) authority, b) necessity, c) public use, and d) good faith offers.

The judge will approve or reject the condemnation case at this time, if the condemnation is approved then an order of condemnation is entered, the court will appoint three disinterested commissioners, who must be residents of the county in which the property lies, to assess damages, if any that were caused to the property as a result of the taking. Such assessment must be concluded in 45 days unless extended by the court for good cause shown.

Related issues: The property owners have expressed concerns over their treatment by the condemning authority and would like to express their concerns to the court, but the judge does not allow that information to be stated in the condemnation hearing.

## **Filing of the Commissioners' Report**

When the report of the commissioners is filed with the court clerk, then the circuit clerk is to immediately forward the report to the recorder of deeds for recording. The clerk is also to forward a notice of commissioner's report and award to each party in the suit.

## **Filing of Exceptions Stage and the Distribution of Monies Stage**

If the amount of the award is not acceptable to you're the land owner , file exceptions to commissioners' award within 30 days of the receipt of the notice of filing of commissioners report or the land owner will lose the right to further challenge the amount of the award. If the condemning authority is displeased with the commissioner's award it has two choices. It can, within 10 days of the date of the filing of the award, elect in writing to abandon the condemnation, or the condemner may also file exceptions. The condemning authority can file an exception and also pay the commissioners award into the court. At this time the condemning authority can take possession of the land and also file an exception and continue on to a jury trial to dispute the commissioner's award.

Related issues: The land owner at this stage has many concerns; they could be happy with the commissioner's award and want the process of eminent domain of their property to be over. The condemning authority needs the property so they pay the award and the plan on continuing the legal process by taking the owner to a jury in order to recoup some of the monies they paid to the land owner in the commissioner's award. This becomes a serious concern to the land owner and a situation many have felt they were not treated fairly by the

condemning authority. The land owner has received the monies from the award but if the award is lowered by a jury in the continued legal action then they must pay back the difference to the condemning authority at 6% interest. This cloud of uncertainty brings much stress to the land owner whose has just lost their property to the condemning authority and knows might owe the condemning authority monies if a jury rules for the condemning authority.

#### Introductory Stage

Consolidated Public Water Supply District No. 1 of Boone County has sent the required 60-day letter to the Pekala Family Limited Partnership to request a Water Line Easement on their property.

#### Negotiation Stage

Mr. Pekala did seek assistance from the office of the Ombudsman to help him in the understanding of the process of condemnation. I met with Mr. Pekala and

#### Case files of the Office of Ombudsman for Property Rights

I will submit a list of case files of Missouri land owners who have contacted this office since my hiring in May of 2009. Since many of the cases have similar issues, I will report ten cases to give you examples of the process of Eminent Domain that the land owners and the condemning authority go through and the issues that arise from this process.



## Case file #1

### Introductory Stage

Consolidated Public Water Supply District No. 1 of Boone County has sent the required 60-day letter to the Pekkala Family Limited Partnership to request a Water Line Easement on their Property.

### Negotiation Stage

Mr. Pekkala did seek assistance from the office of the Ombudsman to help him in the understanding of the process of condemnation. I meet with Mr. Pekkala and explained the process of Eminent Domain and what rights he has under the new law. I explained that the new law specifies that within 30 days of the initial notice by the condemning authority, a landowner may propose an alternative location on his or her property which must be considered by the condemning.

I then met with Chad Henry who is the Right of Way agent for the Water District to explain the new law and to let them know that Mr. Pekkala is going to propose an alternative location of the Water line Easement on his property and that he has 30 days to do so. The water district has been meeting with Mr. Pekkala to try to work out a solution to the issue of the location of the Water Line Easement.

## Condemnation Petition and Hearing Stage

There has been no filing of condemnation by the Water District because they are trying work out a solution with Mr. Pekkala.

## Filing of the Commissioners Report, Filing of Exception Stage, and Distribution of Monies Stage.

Not applicable at this time

Summary: Case is still in the Process and will update the file when a conclusion to the matter is reached.

CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT NO. 1 OF BOONE COUNTY  
1500 North Seventh Street  
Columbia, MO 65201

---

Chad Henry  
Right of Way Agent  
573-449-8723  
fax: 573-499-0578  
e-mail: CHenry@consh2o.org

September 28, 2009

Request for Dedication of 30' Wide Permanent Water Line Easement  
and 25' Wide Construction Easement for Nominal Payment/Consideration

and

Explanation/Notice of Your Rights Under the Law

The Pekkala Family Limited Partnership  
4350 North Route E  
Columbia, MO 65202-8732

Certified Mail  
Regular U.S. Mail

Re: Acquisition by Consolidated Public Water Supply District No. 1 of Boone County of a 30' Wide Permanent Water Line Easement, and 25' Wide Construction Easement, affecting the property ("Your Property" or "Your Land") of the Pekkala Family Limited Partnership, commonly known as 4350 North Route E, Columbia, MO 65202-8732, and legally described on Exhibit A, which is annexed to this letter and is incorporated into this letter by reference

Dear Ladies and Gentlemen:

I am the right-of-way agent for Consolidated Public Water Supply District No. 1 of Boone County, Missouri ("the District"). The Board of Directors of the District ("the Board"), in consultation with the District's engineers, has determined that in order for the District to fulfill its purposes of providing water to its patrons, which is sufficient in quality and quantity, with adequate pressure, the District must construct, install, keep, utilize, maintain, repair, replace, service and operate a new water main ("the Water Main"). The Water Main, a new twelve inch (12") Water Main, must be constructed within the boundaries of your property ("Your Land" or "Your Property"), which consists of that property described on Exhibit A hereto. Such real estate may hereinafter be referred to as "Your Land" or "Your Property".



The District must construct a 12" water transmission main ("the Water Main") which will cross a portion of Your Land. The District, therefore, needs to acquire from you a permanent water line easement ("the Easement"), which will permit the District to construct, install, repair, replace, own, operate, keep, use, patrol and, if necessary, improve and enhance the Water Main, and related appliances and appurtenances and install similar improvements in the future (collectively "the Water Line Easement"), within a strip of Your Land, which is 30' in width. The Water Line Easement will be within that strip of land legally described under the heading "Main Water Line Easement" on **Exhibit B** to this letter.

The locations of the Water Line Easement is shown on **Exhibit C** (consisting of two pages). **Exhibit C** shows the location of the requested 30' wide Water Line Easement, in pictorial form.

Such Easement, the Water Line Easement, is also legally described in that document titled "Water Line Easement" (such document may be referred to herein as "the Easement Document")., **Exhibit D** to this letter.

It is the hope of the District that You will agree to dedicate/donate to the District for nominal consideration the Water Line Easement described above. I, therefore, enclose herewith the "Grant of Easement," titled "Water Line Easement," the Easement Document. A copy of such Easement Document is also attached as **Exhibit D**. A separate original of such Easement Document is also included in this letter. That Document, the "Water Line Easement," provides for the granting by You to the District of the Water Line Easement.

While the District's hope is that You will grant to it, for the nominal consideration of \$100 hereinafter described, the 30' wide Permanent Water Line Easement hereinabove described, You are under no legal obligation to do so as hereinafter described in this letter.

### REQUEST

The District hereby requests of you that you dedicate to the District the Water Line Easement by delivering to the District the signed original of the Easement Document, **Exhibit D** hereto (such separate original being enclosed with this letter) and that you accept from the District, in exchange for your delivery to the District of such Easement Document (the separately enclosed original of **Exhibit D** hereto), the nominal sum of \$100.00.

In addition, I enclose herewith a self-addressed and stamped envelope, to be used by you to return such Easement Document to me, if you find the terms of this Request to be acceptable.

If you find the terms of the Request set forth above to be acceptable, and find the enclosed Easement Document to be acceptable, then please take the Easement Document to a notary public, and sign same before a notary and have your signatures notarized, and return same to me in the enclosed self addressed and stamped envelope. I will then contact you immediately, in order to make

arrangements that are acceptable to you, to deliver to you the District's check for the purchase price in the sum of \$100.00.

If you would prefer to personally deliver the signed and notarized Easement Document to me (or to sign it in our office, before a notary), in exchange for the District's check described above, then please call me at the number set forth above and we will make arrangements to exchange the check for the Document.

Do not sign the copy of the Easement Document which is appended to this letter as **Exhibit D**. Rather, sign the separately enclosed original of such document.

### **EXPLANATION OF YOUR RIGHTS**

The District is requesting, by this letter, that you dedicate the 30' wide Permanent Water Line Easement hereinabove described in this letter, and that you dedicate same to the District for nominal consideration of \$100.00. **However, You are under no obligation to dedicate the Easement for such nominal compensation. You have the rights hereinafter described. Your legal rights include the right to refuse the District's request for the dedication of the Water Line Easement for nominal consideration, as hereinabove set forth in this letter, and to require that the District proceed to acquire such Easement by condemnation proceedings as hereinafter described in this letter, and that the District then pay to you an amount equal to any damages which may be done to the fair market value of Your Land by the taking of such Water Line Easement, together with an amount for any damages which may be caused to the remaining property of Your Land by the use to be made of the Easement by the District.**

**IF YOU DECLINE (AS IT IS YOUR LEGAL RIGHT TO DO) TO GRANT THE DISTRICT'S REQUEST TO DEDICATE THE EASEMENT HEREINABOVE DESCRIBED, FOR THE NOMINAL CONSIDERATION, AS REQUESTED BY THIS LETTER, THEN THE DISTRICT WILL:**

**A. SEEK TO ACQUIRE THE 30' WIDE PERMANENT WATER LINE EASEMENT AND [IF NEEDED] AN ADDITIONAL 25' WIDE TEMPORARY CONSTRUCTION EASEMENT AS SHOWN ON PAGE 2 OF EXHIBIT C HERETO, BY CONDEMNATION IF NECESSARY; AND**

**B. RETAIN AN INDEPENDENT REAL ESTATE APPRAISER TO APPRAISE YOUR PROPERTY AND THE EASEMENT HEREINABOVE DESCRIBED IN PARAGRAPH A, WHICH SUCH APPRAISER WILL:**

**I. APPRAISE THE FAIR MARKET VALUE OF YOUR PROPERTY IN ITS EXISTING CONDITION, WITHOUT THE 30' WIDE WATER LINE EASEMENT;**

**II. APPRAISE THE FAIR MARKET VALUE OF YOUR PROPERTY AS IT WILL EXIST AFTER THE 30' WIDE WATER LINE EASEMENT IS IN PLACE;**



III. DETERMINE THE DIFFERENCE BETWEEN SUCH FAIR MARKET VALUES;

IV. DETERMINE THE VALUE OF DAMAGE CAUSED YOUR PROPERTY BY THE ADDITIONAL 25' TEMPORARY CONSTRUCTION EASEMENT DESCRIBED (SUCH WATER LINE EASEMENT AND SUCH TEMPORARY EASEMENT COLLECTIVELY AFER TO AS "THE EASEMENTS") ABOVE, WHICH IS DESCRIBED ON EXHIBIT B TO THIS LETTER UNDER THE HEADING "CONSTRUCTION EASEMENT", AND IS PICTORIALY SHOWN ON EXHIBIT C TO THIS LETTER;

V. DETERMINE WHETHER YOUR REMAINING PROPERTY WILL SUFFER ANY DAMAGES BECAUSE OF THE USE TO BE MADE OF THE EASEMENT BY THE DISTRICT, OR WHETHER THERE ARE ANY SPECIAL BENEFITS TO YOUR PROPERTY FROM SUCH USE;

VI. DETERMINE IN THIS FASHION THE AMOUNT OF MONEY WHICH THE DISTRICT SHOULD PAY TO YOU FOR THE EASEMENT.

The District will then send the report of the appraiser to You and will offer to pay to You, in exchange for a the Easement, the sums which such appraiser determines to be properly owing to you as fair compensation for such Easement.

#### WILLINGNESS TO DISCUSS

I would be pleased to discuss these matters with you at any time.

#### DISTRICT HAS NO CHOICE

The District has no choice in this matter. Its Board has determined that the Water Main must be constructed. The Board, in consultation with the District's engineers, has determined that it is absolutely, in the public's interest, that the Water Main and associated facilities and improvements be placed within Your Land, in order to satisfy the needs of the public.

The District understands that property owners, many times, do not want to have public improvements (such as water lines, sewer lines, streets, etc.) installed upon their property, and that they, therefore, do not desire to grant the easement, or rights of way, which are required for these improvements. However, the decision as to where such public improvements will be installed rests not with the property owners, but with the governmental entitles or other entities who have a public obligation to install the improvements. The District and its engineers and Board have determined, after substantial consideration, that the Water Main must run through Your Land. The Water Main is required to meet the demands of those members of the public who are Patrons of the District, together with necessary fire flow requirements.



Note that the District, like other public water supply districts, is a public corporation of the State of Missouri. Such districts are formed pursuant to Chapter 247 of the Revised Statutes of Missouri. Section 247.020 RSMo. provides that water districts shall be "political corporations of the State of Missouri." Section 247.050 provides that public water supply districts organized under the provisions of Chapter 247 RSMo. shall have the power to:

"... (7) to condemn private property within or without the district, needed for the uses and purposes in sections 247.010 to 247.220 provided for."

The District is, therefore, empowered by the statutes of the State of Missouri to condemn private property, if necessary, for the installation of the Water Mains and other improvements required to serve the purposes of the District. Section 247.210 RSMo. provides that proceedings by water districts for condemnation of property of private property owners "shall, as nearly as may be practicable, be the same as proceedings provided for condemnation of property by cities of the fourth class, except that proceedings shall be instituted and carried through by the board of directors."

The Board of the District has determined that the Water Main must be constructed within Your Land. The Board of the District has, therefore, authorized myself and other employees of the District to acquire the above described Easement over Your Land, and to acquire the Easement by condemnation, if necessary. However, the District would, obviously, prefer to avoid incurring the burden and expense of an action in condemnation.

#### NOTICE OF YOUR LEGAL RIGHTS

SECTION 523.250.1 OF THE MISSOURI STATUTES REQUIRES THAT THE DISTRICT GIVE TO YOU A WRITTEN NOTICE OF YOUR LEGAL RIGHTS. IF YOU DO NOT AGREE TO PROVIDE, FOR THE NOMINAL CONSIDERATION OF \$100, THE 30' WIDE WATER LINE EASEMENT DESCRIBED ABOVE, THE DISTRICT WILL SEEK TO ACQUIRE SUCH 30' PERMANENT WATER LINE EASEMENT AND, ADDITIONALLY, A 25' WIDE TEMPORARY CONSTRUCTION EASEMENT AS HEREINABOVE DESCRIBED IN THIS LETTER, THEN THE DISTRICT WILL SEEK TO ACQUIRE SUCH EASEMENT AND RIGHTS FROM YOU (COLLECTIVELY, "THE EASEMENT") FOR A SUM OF CONSIDERATION (DAMAGES) AS DETERMINED BY A QUALIFIED REAL ESTATE APPRAISER, AS HEREINABOVE SET FORTH IN THIS LETTER. AT THAT POINT, THE DISTRICT WILL MAKE TO YOU A CASH OFFER TO PURCHASE THE EASEMENTS (I.E., THE 30' WIDE PERMANENT WATER LINE EASEMENT AND THE 25' WIDE TEMPORARY CONSTRUCTION EASEMENT) FROM YOU FOR THE SUMS DETERMINED BY THE APPRAISAL, AND WILL MAKE SUCH OFFER TO YOU IN WRITING, AND WILL FORWARD TO YOU AS AN ATTACHMENT TO SUCH WRITING A COPY OF THE APPRAISAL. THE DISTRICT WILL THEN, AFTER NOT LESS THAN 60 DAYS FROM THE DATE OF THE MAILING OF THIS LETTER, SEEK TO ACQUIRE SUCH EASEMENTS BY PROCEEDINGS IN CONDEMNATION, INITIATED BY THE DISTRICT'S FILING IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI OF A CONDEMNATION PETITION. YOU ARE HEREBY GIVEN NOTICE OF THE DISTRICT'S INTENTIONS TO SO PROCEED AND YOU ARE

ALSO GIVEN THE FOLLOWING NOTICE, AS REQUIRED BY SECTION 523.250.1 RSMo. OF THE MISSOURI STATUTES:

1. IDENTIFICATION OF THE INTEREST IN REAL PROPERTY TO BE ACQUIRED. THE DISTRICT WILL SEEK BY CONDEMNATION PROCEEDINGS TO ACQUIRE FROM YOU A 30' WIDE PERMANENT WATER LINE EASEMENT, OVER YOUR LAND/YOUR PROPERTY, AS HEREINABOVE DESCRIBED IN THIS LETTER AND AS SHOWN ON EXHIBIT C TO THIS LETTER, AND AN ADDITIONAL 25' WIDE TEMPORARY CONSTRUCTION EASEMENT AS HEREINABOVE DESCRIBED IN THIS LETTER AND AS SHOWN ON SUCH EXHIBIT C, FOR THE CONSTRUCTION, KEEPING, MAINTENANCE, REPAIR, REPLACEMENT, UPKEEP AND IMPROVEMENT OF A 12" WATER MAIN, AND ANY REPLACEMENTS THEREFOR AND IMPROVEMENTS THEREOF, AND ANY ADDITIONAL WATER MAINS OR SIMILAR FACILITIES AND ALL RELATED APPLIANCES, TOGETHER WITH A RIGHT OF ACCESS OVER YOUR PROPERTY FOR SUCH PURPOSES.
2. PURPOSE OR PURPOSES FOR WHICH PROPERTY IS TO BE ACQUIRED. THE PERMANENT WATER LINE EASEMENT DESCRIBED IN 1. ABOVE SHALL BE ACQUIRED BY THE DISTRICT IN ORDER TO PROVIDE TO THE DISTRICT THE PERPETUAL EASEMENT AND RIGHTS TO CONSTRUCT WITHIN BOUNDARIES OF SUCH EASEMENT THE WATER MAIN HEREINABOVE DESCRIBED, TOGETHER WITH ALL FACILITIES AND APPURTENANCES WHICH ARE REQUIRED FOR SUCH WATER MAIN, AND TO PATROL, MAINTAIN, REPAIR, REPLACE, IMPROVE AND UPGRADE SUCH WATER MAIN AND TO INSTALL ADDITIONAL SIMILAR FACILITIES, AND ALL RELATED APPLIANCES. THE TEMPORARY CONSTRUCTION EASEMENT HEREINABOVE DESCRIBED WILL BE ACQUIRED SOLELY TO FACILITATE THE DISTRICT'S CONSTRUCTION OF THE 12" WATER MAIN, AND THAT EASEMENT WILL END AND TERMINATE WHEN THE CONSTRUCTION OF THE WATER MAIN IS COMPLETED.
3. SUMS OFFERED BY DISTRICT. THE DISTRICT WILL OFFER TO YOU FOR SUCH PERMANENT WATER LINE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT, THE SUM OF COMPENSATION WHICH AN APPRAISER DETERMINES THAT YOU ARE ENTITLED TO RECEIVE. SUCH APPRAISAL WILL BE ATTACHED TO THE DISTRICT'S OFFER LETTER.
4. A STATEMENT OF YOUR RIGHTS. YOU HAVE THE RIGHT TO:
  - (A) LEGAL COUNSEL. SEEK LEGAL COUNSEL AT YOUR EXPENSE;
  - (B) COUNTEROFFER: MAKE A COUNTEROFFER AND ENGAGE IN FURTHER NEGOTIATIONS;
  - (C) OBTAIN YOUR OWN APPRAISAL. OBTAIN YOUR OWN APPRAISAL OF JUST COMPENSATION FOR THE EASEMENT AND RIGHTS WHICH THE DISTRICT SEEKS TO ACQUIRE FROM YOU, WITH SUCH APPRAISAL TO BE OBTAINED AT YOUR COST;



(D) HAVE COMPENSATION DETERMINED. HAVE JUST COMPENSATION DETERMINED, PRELIMINARILY, BY COURT APPOINTED CONDEMNATION COMMISSIONERS AND, ULTIMATELY, BY A JURY;

(E) ASSISTANCE FROM OFFICE OF THE OMBUDSMAN - SEEK ASSISTANCE FROM THE OFFICE OF THE OMBUDSMAN FOR PROPERTY RIGHTS CREATED UNDER SECTION 523.277 OF THE MISSOURI STATUTES, AS FOLLOWS:

OFFICE OF THE OMBUDSMAN  
OFFICE OF PUBLIC COUNSEL  
GOVERNOR OFFICE BLDG., SUITE 650  
200 MADISON STREET  
P.O. Box 2230  
JEFFERSON CITY, MO  
65102-2230  
TELEPHONE: 573-751-4857 FAX: 573-751-5562  
E-MAIL: [mopco@ded.mo.gov](mailto:mopco@ded.mo.gov)

(F) CONTESTING OF RIGHT TO CONDEMN - CONTEST THE RIGHT OF THE DISTRICT TO CONDEMN IN THE CONDEMNATION PROCEEDINGS; AND

(G) VACATION OF EASEMENT - EXERCISE THE RIGHTS TO REQUEST VACATION OF AN EASEMENT UNDER THE PROCEDURES AND CIRCUMSTANCES PROVIDED FOR IN SECTION 527.188 RSMo.

THE NOTICE HEREINABOVE SET FORTH MAY NOT AGAIN BE GIVEN TO YOU IF YOU.

WILLINGNESS TO DISCUSS COUNTEROFFER AND FURTHER NEGOTIATIONS

I would be pleased to discuss these matters with you at any time. Certainly the District is willing to discuss with you the matters set forth in this letter. The District will receive any counteroffers which you care to make for the sale of the Water Line Easement to the District, and to engage in further discussions and negotiations with you. However, after not less than 60 days from the date of this letter is mailed to you (meaning after such 60 days have expired), the District will be required initiate condemnation proceedings as described above if it has not, within such time, been able to acquire from you the 30' wide Permanent Water Line Easement hereinabove described in this letter.

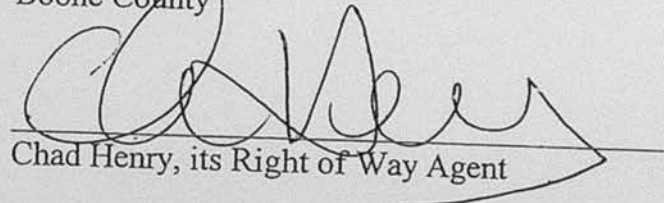


**PLEASE LET US HEAR FROM YOU**

I look forward to hearing from you. Thank you for your very kind attention to these matters.

Sincerely yours,  
Consolidated Public Water Supply District No. 1 of  
Boone County

By:

  
Chad Henry, its Right of Way Agent

**Exhibit A** - Legal Description

**Exhibit B** - Easement Descriptions

**Exhibit C** - Pictorial easement locations

**Exhibit D** - Water Line Easement

Case file #2

### Introductory Stage

The Village of Silver Creek sent a 60 day letter to the Stella's to obtain a permanent easement across their property for the purpose of constructing a waste-water collection system.

### Negotiation Stage

I was contacted by Kelly Strella who wanted to seek assistance from the Office of Ombudsman for Property Rights. I met with the Strellas and explained the process of Eminent Domain and that they could propose an alternative location of the sewer line to the Village of Silver Creek. I then met with Mayor of Silver Creek to explain the process of the new law allowing the landowner to propose an alternative location of the sewer line on their property.

The Village of Silver Creek considered the Strella's proposal which also asked that the pumping station be constructed on a neighbors land and that the Village would have to purchase that land and the Strella's would donate their land. This proposal was accepted by both parties.

**Condemnation Petition and Hearing Stage, Filing of the Commissioners' Report, Filing of Exceptions Stage and the Distribution of Monies Stage**

Not applicable

Summary: The Strellas were able to resolve this dispute since I was able to meet with both sides in this matter and explain the concerns of both parties to each other. The Strellas and the Village of Silver

Creek were both fine with the way the process of having a third party involved and helping to resolve the dispute.

Certified Mail - return receipt requested  
September 22, 2009

Anthony and Kelly L. Stella  
3112 Woodland Dr.  
Joplin, Missouri 64804

Dear Mr. and Mrs. Stella:

The Village of Silver Creek has approved a program for the construction of a waste-water collection system. It will be necessary to acquire rights-of-way and easements to accomplish the proposed sewer improvements as indicated on preliminary engineering plans.

Our records indicate that you are the owners of property located at 3112 Woodland Drive, Joplin, MO 64804, and legally described as: All of Lot Numbered 4 in Sunset Park 2<sup>nd</sup> Subdivision, Newton County, Missouri.

As indicated in the design plan for this project, it will be necessary for the Village of Silver Creek to obtain a right-of-way across your property. As the property owners, you should understand that you have the right to: (1) seek legal counsel at your expense; (2) make a counter-offer and engage in further negotiations; (3) obtain your own appraisal of just compensation; (4) have just compensation determined preliminarily by court-appointed condemnation commissioners and ultimately by a jury; (5) seek assistance from the Office of Ombudsmen for property rights created under 8523.227; (6) contest the right to condemn and the condemnation proceeding; and (7) exercise the rights to request vacation of an easement under the procedures and circumstances provided for in Section 527.168.

As Attorney for the Village of Silver Creek, I will be representing the Village in negotiations for this project. Further communication regarding the Village's proposed acquisition will soon be forthcoming. In the interim, if you have any questions, please feel free to contact me.

Sincerely,

MARTIN FISHER LAF & ASSOCIATES, L.L.C.



Mark C. Fisher  
Village of Silver Creek  
Mr. Chris Ertman, Attorney Martin & Assoc.





LAW OFFICES  
**WARTEN, FISHER, LEE and BROWN, LLC**  
A LIMITED LIABILITY COMPANY

ROBERT B. LEE  
bo@wflb.com

CHUCK D. BROWN  
chuck@wflb.com

MATTHEW G. ADRIAN  
matt@wflb.com

MARK A. LITER  
mark@wflb.com

613 South Byers Avenue  
P.O. Box 939  
Joplin, Missouri 64802  
417-624-3818  
FAX 417-624-3896

HENRY WARTEN  
1910-2007

ROGER K. FISHER  
1939-2001

\*Also licensed in Kansas  
\*Also licensed in Oklahoma

**Certified Mail – return receipt requested**  
September 22, 2009

Rodney and Kelly L. Strella  
3112 Woodland Dr.  
Joplin, Missouri 64804

Dear Mr. and Mrs. Strella:

The Village of Silver Creek has approved a program for the construction of a waste-water collection system. It will be necessary to acquire rights-of-way and easements to accomplish the proposed sewer improvements as indicated on preliminary engineering plans.

Our records indicate that you are the owners of property located at 3112 Woodland Drive, Joplin, MO 64804, and legally described as: All of Lot Numbered 8 in Sunset Park 2<sup>nd</sup> Subdivision, Newton County, Missouri.

As indicated in the design plan for this project, it will be necessary for the Village of Silver Creek to obtain a right-of-way across your property. As the property owners, you should understand that you have the right to: (1) seek legal counsel at your expense; (2) make a counter-offer and engage in further negotiations; (3) obtain your own appraisal of just compensation; (4) have just compensation determined preliminarily by court-appointed condemnation commissioners and ultimately by a jury; (5) seek assistance from the Office of Ombudsmen for property rights created under §523.277; (6) contest the right to condemn and the condemnation proceeding; and (7) exercise the rights to request vacation of an easement under the procedures and circumstances provided for in Section 527.188.

As Attorney for the Village of Silver Creek, I will be representing the Village in negotiations for this project. Further communication regarding the Village's proposed acquisition will soon be forthcoming. In the interim, if you have any questions, please feel free to contact me.

Sincerely,

**WARTEN, FISHER LEE & BROWN, L.L.C.**

Chuck D. Brown

CDB/ks

cc: Village of Silver Creek  
Mr. Chris Erisman, Allgeier Martin & Assoc.

## Case #3

### Introductory Stage

The City of Grandview has sent a 60 day letter to Franz Buddenburg to acquire a permanent drainage easement and a temporary construction easement for the construction of a new road.

### Negotiation Stage

Mr. Buddenburg contacted the Office of Ombudsman to seek assistance about the condemning of his property by the City of Grandview. I met with Mr. Buddenburg and explained the process he was about to go through with the City of Grandview and explained to him about proposing an alternative plan to the City. I then met with the special counsel for the city of Grandview and brought to them some of the concerns Mr. Buddenburg has about the land the City wants to acquire.

The City of Grandview submitted a financial offer to Mr. Buddenburg and he countered with a higher offer, then the city rejected his alternative proposal and directly went to the condemnation hearing stage.

### Condemnation Petition and Hearing Stage

Mr. Buddenburg had to attend the Condemnation Hearing because the City of Grandview decided to stop the negotiations and proceed to acquire the property. The Judge ruled that the City of Grandview has the right to acquire the property and appointed three commissioners. Mr. Buddenburg has met with commissioners to explain his point of view on what the value of the property is.

## Filing of the Commissioners Report

Mr. Buddenberg is now waiting for the notice from the circuit clerk of the commissioner report and the amount of the award.

Filing of exceptions Stage and the Distribution of Monies Stage: no decision on this matter at this time.

From: Buddenberg  
1205 1<sup>st</sup> Street  
Grandview, MO 64030

### RE: NOTICE OF INTENT TO ACQUIRE PROPERTY INTERESTS Panel 5

Dear Mr. Buddenberg:

I am Special Counsel for the City of Grandview ("City"). This letter is to officially inform you that the City plans to acquire right-of-way, a permanent drainage easement, and temporary construction easements on property located at 1205 1<sup>st</sup> Street, Grandview, Missouri, which is now used for construction of the 2nd/3rd Street Overpass Project ("Project"). A drawing depicting the right-of-way (red), temporary construction easements (blue) and drainage easement (green) is enclosed for information.

It is anticipated that negotiations will be initiated for the acquisition of property interests in the subject property in the very near future. We want to inform you that you have the right to resolve compensation for the right-of-way, a permanent drainage easement, and temporary construction easements as determined by an appraiser, paid for by the City. You may be contacted by the City's appraiser. An acquisition procedure explaining the process which must be followed to acquire property interests necessary for the Project is enclosed with this letter.

This letter apprises the City that you are entitled to by Chapter 523 of the Revised Statutes of Missouri. The City expects acquisition of a fee interest, fee title and easements from you. We urge you to act in a timely and efficient manner. Under Missouri law, you are entitled to the following:

- a. Your land acquired at your own expense;
- b. Make a contribution and engage in future negotiations;





April 27, 2009

**CERTIFIED AND REGULAR MAIL**

Franz Buddenberg  
12608 3<sup>rd</sup> Street  
Grandview, MO 64030

Re: NOTICE OF INTENT TO ACQUIRE PROPERTY INTERESTS  
Parcel 5

Dear Mr. Buddenberg:

I am Special Counsel for the City of Grandview ("City"). This letter is to officially inform you that the City plans to acquire right-of-way, a permanent drainage easement, and temporary construction easements on property located at 12520 3<sup>rd</sup> Street, Grandview, Missouri, which you now own, for construction of the 2nd/3rd Street Connector Project ("Project"). A drawing depicting the right-of-way (red), temporary construction easements (blue) and drainage easement (green) is enclosed for information.

It is anticipated that negotiations will be initiated for the acquisition of property interests in the subject property in the very near future. We want to inform you that you have the right to receive compensation for the right-of-way, a permanent drainage easement, and temporary construction easements, as determined by an appraisal paid for by the City. You may be contacted by the City's appraiser. An acquisition brochure explaining the process which must be followed to acquire property interests necessary for the Project is enclosed with this letter.

This letter represents the 60-Day Notice you are entitled to by Chapter 523 of the Revised Statutes of Missouri. The City regards condemnation as a last resort, but it can and sometimes does occur. We urge you not to delay, as these are important rights. Under Missouri Law, you are entitled to the following:

- a. Seek legal counsel at your own expense;
- b. Make a counteroffer and engage in further negotiations;

## Case #4

### Introductory Stage

Mr. Patel received a 60 day letter from MoDOT for the purpose of a partial taking of their property. I was contacted by the property owner who decided to seek assistance from the Ombudsman for Property Rights. I met with the Patel's to discuss the process of eminent domain and told of their option of proposing an alternative plan to MoDot. I then met with MoDOT to explain their concerns that MoDot's plan has put on their business by the partial taking of their property.

### Negotiation Stage

The Patels have decided to seek legal counsel and hired Michael Levota, attorney at law, to handle the negotiations for the Patels.

### Condemnation Petition and Hearing Stage

There has been no decision by MoDot on if they are going to file a condemnation petition.

### Filing of the Commissioners Report, Filing of Exceptions Stage, and the Distribution of Monies Stage

There is no information to report at these stages.

Missouri  
Department  
of Transportation



Elizabeth A. Wright, District Engineer

314-340-7242  
District 4 - Kansas City Area  
600 NE Colbern Road  
Lee's Summit, MO 64086  
(816) 622-6500  
Fax (816) 622-6323  
Toll free 1-888 ASK MoDOT  
(1-888-ASK-6636)  
www.modot.mo.gov

August 25, 2009

Mr. and Mrs. H. Patel  
7911 E. 40 Highway  
Kansas City, MO 64129

**RE: Jackson Co., Routes I-435/I-70/40, J411597, Tr. #17 (7911 E. 40 Hwy.)**

Dear Mr. and Mrs. Patel:

This letter is being sent to you pursuant to legislation that became effective August 28, 2006 regarding your property in Jackson County, Missouri.

The Missouri Highways and Transportation Commission (MHTC) has planned a project to improve the above routes listed above. The improvements include adding lanes, ramps, bridges, signals, lighting, signing and retaining walls.

The project affects a portion of your property in Jackson County, Missouri on Route 40. The land and/or easement(s) and property rights we intend to acquire from you for the completion of the improvement project are indicated on plan sheet(s) herein provided to you (*note: plans may change*). A MoDOT right of way representative will contact you in the near future regarding the acquisition process. However, we are required by law to inform you of the following:

You have the right to:

- a. Seek legal counsel at your own expense;
- b. Make a counteroffer and engage in further negotiations;
- c. Obtain your own appraisal of just compensation at your own expense (Please be advised, should we be required to file a condemnation petition, this could be done in 60 days. Therefore, if you wish for us to review your appraisal, keep this timeframe in mind);
- d. Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
- e. Seek assistance from the office of the ombudsman for property rights, as created under Section 523.277 RSMo, at:

*Our mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri.*



Tom Green, Ombudsman for Property Rights  
The State of Missouri

111 North 7th Street, Suite 934

St Louis, MO 63101

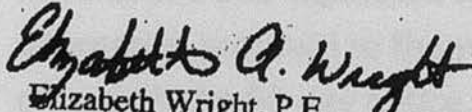
314-340-4877 Phone | 314-340-7292 Fax | 866-922-2959 Toll Free

- f. Contest the right to condemn in the condemnation proceeding; and
- g. Exercise the right to request vacation of an easement under the procedures and circumstances provided for in Missouri Statute.

As a potentially impacted landowner connected with our upcoming roadway improvements, please be advised that you and any landowner of property interests being acquired for this project has the right to submit alternate location proposals for a period of up to and including 30 days after receipt of this letter. Proposals for alternate locations on your property shall be in writing and described in such detail that the alternate location is clearly defined. Please submit such proposals to the project manager, Rick Orr, at 600 NE Colbern Road, Lee's Summit, Missouri 64086.

Should you have questions regarding the project design, please contact the project manager, Rick Orr, at 816.622.0460.

Sincerely,

  
Elizabeth Wright, P.E.  
District Engineer

Enclosure;

J:Jax/I-435/I-70/40, I597, Tr.#17

## Case #5

### Introductory Stage

Southern Missouri Natural Gas has sent the Thousand Hills Golf Partnership a 60 day notice that they want run a gas line across their golf course property.

### Negotiation Stage

I was contacted by Mark Ruda who manages the Thousand Hills Golf Course; he has decided to seek assistance from the Office of Ombudsman for Property Rights. I met with Mr. Ruda and explained to him the process of Eminent Domain, also I explained to him the process of submitting an alternative plan to the condemning authority for their consideration. I then met with Southern Missouri Natural Gas and expressed the concerns of Mr. Ruda's and submitted their alternative proposal to them. Southern Missouri Natural Gas also gave their final offer with the 60-day notice, this has brought bitter feeling during the negotiation stage and the golf course is going to seek legal counsel as an option.

### Condemnation Petition and Hearing Stage

Southern Missouri Natural Gas has not made a decision yet on if they are going to continuing negotiating or if they are going to file a condemnation petition.



## Southern Missouri Natural Gas

114 Wintergreen Unit #3, Branson, MO 65616, (417) 926-7533

July 23, 2009

CERTIFIED MAIL RETURN RECEIPT REQUESTED  
7009 0820 0000 3424 3837

Thousand Hills Golf Partnership  
c/o Dan C. Ruda  
245 S. Wildwood Dr.  
Branson, MO 65616

Re: **FINAL OFFER LETTER AND 60-DAY NOTICE OF INTENT TO COMMENCE  
CONDEMNATION PROCEEDINGS**

Dear Mr. Ruda:

As you know from our previous communications with Mr. Mark Ruda, Southern Missouri Natural Gas (SMNG) must acquire a right of way easement across your property in order to install and maintain a natural gas pipeline which will transport gas to serve the City of Branson, Missouri. SMNG is a regulated public utility in Missouri whose primary business is the transportation and delivery of natural gas to residential, commercial and industrial customers. In 2007 the City of Lebanon granted SMNG a Franchise Agreement to provide natural gas service to its residents and businesses. Also in 2007, the Missouri Public Service Commission granted SMNG a Certificate of Convenience and Necessity approving the Franchise Agreement and SMNG's construction plans.

Over the past couple of weeks, SMNG has attempted to negotiate an amicable agreement with Mr. Mark Ruda regarding purchase of the necessary right of way easement. Despite those good faith attempts, we have been unable to complete a voluntary agreement.

Because of the planning and construction time constraints, we need to acquire this easement now. As a final offer to reach a voluntary agreement, SMNG is prepared to offer you One-hundred dollars (\$100.00) per linear rod (16.5 feet) for a 30-foot wide right of way easement across your property. Attached hereto is a copy of the Right of Way Agreement signed by SMNG as well as a signed check in the amount of \$8,856.00 (EIGHT THOUSAND EIGHT HUNDRED FIFTY-SIX, and 00/100), in return for your acceptance of this Agreement.

**As a public utility in the State of Missouri, SMNG has the legal right to condemn and expropriate private property to accomplish its public purpose as a regulated utility and will commence with such action unless the enclosed Right of Way Agreement has been signed and returned to SMNG within sixty (60) days after the date of this letter.**

Please be advised that you, as the landowner, have the right to (1) seek legal counsel at your own expense; (2) make a counter-offer and continue negotiations; (3) obtain an appraisal of just

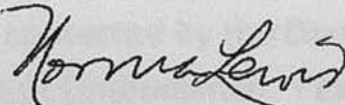


compensation, at your expense; (4) have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a judge or jury; (5) seek assistance from the office of ombudsman for property rights created under R.S. Mo. 523.277; (6) contest the right to condemn in the condemnation proceeding; and (7) exercise the rights to request vacation of an easement under the procedures and circumstances provided for in R.S. Mo. 527.188

Although SMNG has the legal right to begin condemnation proceedings and is prepared to do so, we understand that formal legal proceedings can be costly, time-consuming and disruptive for both parties and we would prefer to reach mutually agreeable terms directly with you. To date, SMNG has successfully negotiated many similar agreements for substantially less money (\$35.00 per rod). However, in an effort to expedite this process and save both parties time and money, we are prepared to make this final offer which we believe is significantly above fair market value for an easement.

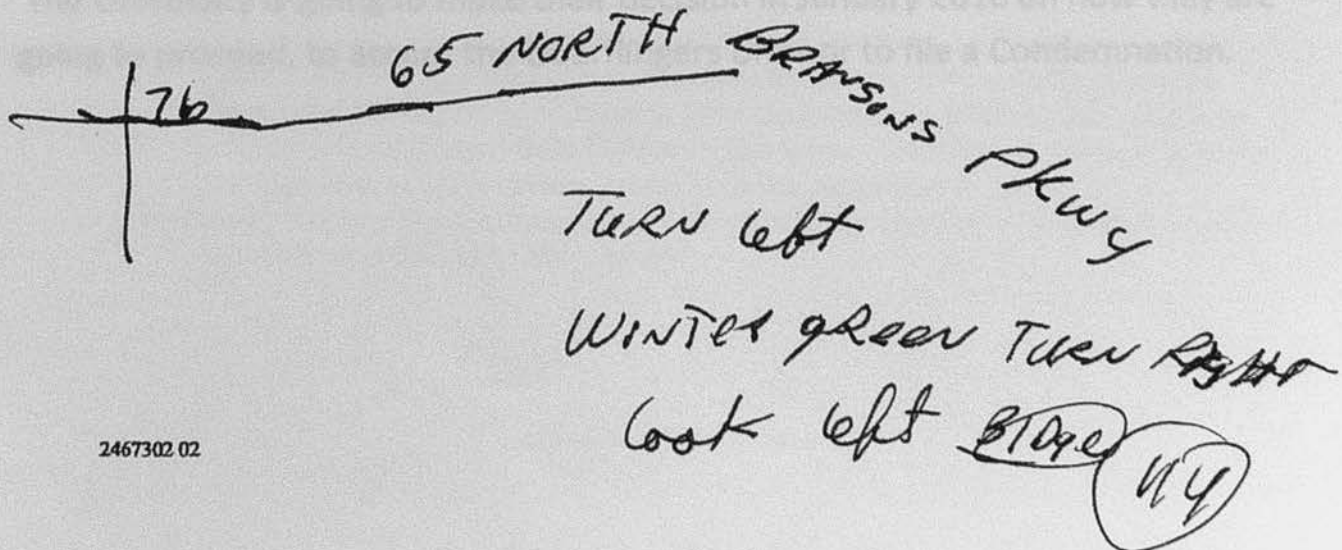
We hope that you will find this final offer acceptable and look forward to closing this transaction as quickly as possible. Feel free to contact me at 417-349-1272 if you have any questions.

Sincerely,



Norma Lewis  
Right of Way Manager  
Southern Missouri Natural Gas Co.  
114 Wintergreen, Unit #3  
Branson, MO 65616

Enclosures: ROW and Easement Agreement  
Letter Agreement  
Exhibit A and Exhibit B  
Check No. 1541  
Self Stamped addressed envelope



## Case #6

### Introductory Stage

The University of Central Missouri has sent a 60 day notice to Elray Doerflinger to notify them that the university wants to acquire 31 acres of their land for a runway at Swisher Sky haven Airport.

### Negotiation Stage

I was contacted by the Doerflingers who decided to seek assistance from the Office of Ombudsman. I explained to the process of Eminent Domain and made a list of their concerns. I then met with Jefferey Robinson who is the legal officer for the University, to discuss the concerns the Doerflingers have about the taking of their land. The university has sent them an offer and the Doerflingers feel that it is too low. They have countered with an offer that is based their own appraisal and are waiting for a decision from the university.

### Condemnation Petition and Hearing Stage, Filing of the Commissioners' Report, Filing of Exceptions Stage and the Distribution of Monies Stage

The University is going to make their decision in January 2010 on how they are going to proceed, to accept the Doerflingers offer or to file a Condemnation.



July 11, 2008

6. 1972  
Elray & Virginia Doerflinger  
281 NW 200<sup>th</sup> Rd.  
Warrensburg, MO 64093

RE: Written Notice of Intended Acquisition

Dear Mr. & Mrs. Doerflinger:

The University of Central Missouri is conducting a project to acquire property to ensure future compatible land use immediately adjacent to the Max B. Swisher Skyhaven Airport; to ensure unobstructed flight paths to the Runway 18 threshold within the approach surface; and to ensure continuity of the Runway 18 Runway Protection Zone for the Swisher Skyhaven Airport. The project requires the acquisition of a portion of your property known as Lots 6, 7, 8, 9, 10 and 11 of Doerflinger Estates.

The area to be acquired is an approximate 31.328 acre tract, located along the western portion of the above referenced lots and also identified as Tract U-1 on the attached Airport Layout Plan. We are hopeful that because of the benefits to be derived from the project, we can reach an agreement with you for the land needed.

This letter represents the 60-Day Notice you are entitled to by Chapter 523 of the Revised Statutes of Missouri. Negotiations will begin in the near future, and we are hopeful that a settlement will be reached. The University regards condemnation as a last resort, but it can and sometimes does occur. We urge you not to delay, as these are important rights. Under Missouri Law, you are entitled to the following:

- a. Seek legal counsel at your own expense;
- b. Make a counteroffer and engage in further negotiations;
- c. Obtain your own appraisal of just compensation at your own expense (Please be advised that should we be required to file a condemnation petition, this will not be done for at least 60 days from the date of this letter. Therefore, if you wish to submit your appraisal to us for review, please keep this timeframe in mind.);
- d. Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;



- e. Seek assistance from the office of the ombudsman for property rights, as created under Section 523.277 RSMo, at:  
Office of Public Counsel  
Governor Office Bldg., Suite 650  
200 Madison Street  
P.O. Box 2230  
Jefferson City, MO 65102-2230  
573-751-4857 (Phone)  
573-751-5362 (Fax)
- f. Contest the right to condemn in the condemnation proceeding; and
- g. Exercise the right to request vacation of an easement under the procedures and circumstances provided for in Missouri Statute.

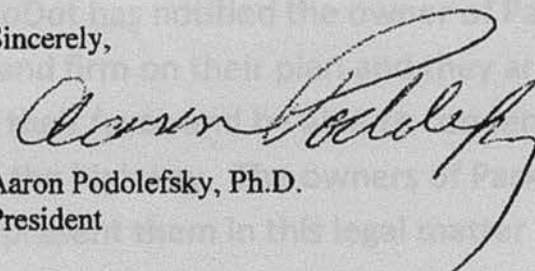
All land acquisition activities will be conducted in compliance with federal regulations, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24) and the Federal Aviation Administration Advisory Circular 150/5100-17.

The University's real estate consultant, O.R. Colan Associates (ORC), will contact you in the near future regarding the appraisal of your property. Two appraisals of the property will be prepared and an appraisal review will be conducted.

It is our understanding there is construction occurring on one of the impacted lots. We feel it will be in the best interest of all parties involved to cease all construction activities on Lots 6 through 11 until such time the University is prepared to extend a written offer to purchase.

Should you have any questions, please feel free to call Jill Knobbe of O.R. Colan Associates at (800) 769-2296 or (314) 303-4809.

Sincerely,



Aaron Podolefsky, Ph.D.  
President

cc: Mike Waller, BWR  
Ashleigh Robison, ORC

Enclosures

## Case #7

### Introduction Stage

CKC Holdings, LLC was sent a 60 day letter from MoDOT to notify them that they want to acquire property from the front of their entrance to their business. The business in question is Parkville Self Storage.

### Negotiation Stage

The main issue at this stage is that MoDOT wants to acquire the land to widen highway 45, and eliminate the current full access from highway 45 into Parkville Self Storage. The elimination of full access brings a concern on behalf of the land owners that the elimination of full access to highway 45 will have a huge negative effect on their business. The negotiations have been going on for months and there has been a final decision by MoDot to stay with their plan and eliminate full access to Parkville self Storage, this decision has ended the negotiations between CKC Holdings and MoDOT.

### Condemnation Petition and Hearing Stage

MoDot has notified the owner of Parkville Self Storage that they are going to stand firm on their plan and they are going to court to try to get the judge to rule in their favor and be able to condemn the property and proceed with the building of the highway. The owners of Parkville Self Storage have hired an attorney to represent them in this legal matter and intend on challenging this Condemnation petition.

### Filing of the Commissioners Report:

No decision on this case at this time.



Missouri  
Department  
of Transportation



Elizabeth A. Wright, District Engineer

District 4 - Kansas City Area  
600 NE Colbern Road  
Lee's Summit, MO 64086  
(816) 622-8500  
Fax (816) 622-6323  
Toll free 1-888-ASK MoDOT  
(1-888-ASK-6636)  
www.modot.mo.gov

March 4, 2009

CKC Holdings, LLC  
P.O. Box 56  
Waldron, MO 64092

RE: Platte Co., J4U1108B, Rte. 45, Tr. #112

To Whom It May Concern:

This letter is being sent to you pursuant to legislation that became effective August 28, 2006 regarding your property.

The Missouri Highways and Transportation Commission (MHTC) has planned a project to improve Route 45 from Route 9 to just east of Route K in Platte County. The safety and capacity improvements include the widening of Route 45, grading, paving, roundabouts, signals and signing.

The project affects a portion of your property in Platte County, Missouri. The land and/or easement(s) and property rights we intend to acquire from you for the completion of the improvement project are indicated on plan sheet(s) herein provided to you (*note: plans may change*). A MoDOT right of way representative will contact you in the near future regarding the acquisition process. However, we are required by law to inform you of the following:

You have the right to:

- a. Seek legal counsel at your own expense;
- b. Make a counteroffer and engage in further negotiations;
- c. Obtain your own appraisal of just compensation at your own expense (Please be advised, should we be required to file a condemnation petition, this could be done in 60 days. Therefore, if you wish for us to review your appraisal, keep this timeframe in mind);
- d. Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
- e. Seek assistance from the office of the ombudsman for property rights, as created under Section 523.277 RSMo, at:

*Our mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri.*



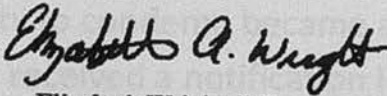
Anthony Martin, Ombudsman for Property Rights  
The State of Missouri  
111 North 7th Street, Suite 934  
St Louis, MO 63101  
314-340-4877 Phone | 314-340-4878 Fax | 866-922-2959 Toll Free

- f. Contest the right to condemn in the condemnation proceeding; and
- g. Exercise the right to request vacation of an easement under the procedures and circumstances provided for in Missouri Statute.

As a potentially impacted landowner connected with our upcoming roadway improvements, please be advised that you and any landowner of property interests being acquired for this project has the right to submit alternate location proposals for a period of up to and including 30 days after receipt of this letter. Proposals for alternate locations on your property shall be in writing and described in such detail that the alternate location is clearly defined. Please submit such proposals to the project manager, Randy Johnson, at 600 NE Colbern Road, Lee's Summit, MO 64086.

Should you have questions regarding the project design, please contact the project manager, Randy Johnson, at 816.622.0483.

Sincerely,



Elizabeth Wright, P.E.  
District Engineer

**SENT VIA CERTIFIED MAIL**

RE: J/Tract Files/Plt/45/J4U1108B/Tr.#112

Case #8

### Introductory Stage

Jamie Jennings has received a 60 day letter from the Stoddard County Common Sewer district No.1 notifying him that they want to install a sewer line across his property.

### Negotiation Stage

Mr. Jennings has contacted the Office of Property Rights to seek assistance on the process of Eminent Domain. I met with Mr. Jennings and explained to him that he could propose an alternative plan to the sewer district on the location of the sewer line. The issue of fighting the sewer district in court on issues of their ability to condemn became a driving issue to Mr. Jennings and other landowners who received a notification letter from the Sewer District. I held a town hall meeting in Dexter Missouri to explain to many landowners the process of Eminent Domain and that the sewer district does have the power of condemnation. The negotiation between Mr. Jennings continued and a compromise was reached before this went to a condemnation hearing.

### Condemnation Petition and Hearing Stage, Filing of the commissioners Report

Not applicable



**HOLDEN LAW OFFICE, P.C.  
718 W BUSINESS HIGHWAY 60  
P.O. Box 633  
DEXTER, MISSOURI 63841**

**STEPHEN W. HOLDEN  
NATALIE D. RILEY**

**TELEPHONE: (573) 624-8901  
FAX: (573) 624-8188**

**VIA CERTIFIED MAIL**

**March 9, 2009**

**Jamie Jennings  
16328 Holly Hills Drive  
Dexter, MO 63841**

**Re: Sewer Easement, Stoddard County, Missouri**

**Dear Sir/Madam:**

Please be advised that my office has been retained to represent the Stoddard County Common Sewer District No. 1 (hereinafter "Sewer District"). The Sewer District 1 has secured \$3,086,000 in grant funds and a low interest loan of \$1,850,000 to pay for the sewage collection and treatment system. Before the Sewer District can proceed to construction, they must obtain the right-of-way easements necessary to build the system. There are approximately 330 users and approximately 80 easements that are still needed. Any money expended to acquire easements will result in an increase in the monthly maintenance fee on all users in the future.

Due to the benefits of the sewer system to our area and the fact that any payment for a landowner's easement will increase the overall construction costs, we are asking each landowner to voluntarily sign their easement. The engineer for the Sewer District has designed the collection system to minimize construction and operating costs; minimize the disruption to your property and to follow the gravity flow to the collection mains and pump stations. Upon completion, the Sewer District will repair any damage to your property.

Representatives of the Sewer District have made efforts to talk to each property owner; however, if someone has not contacted you, please call our office to review the maps and easement you are being asked to sign.



Page Two of Two  
March 9, 2009

In the event that the Sewer District is unable to obtain the easement from you, the Sewer District intends on filing a condemnation petition seeking to acquire an interest in the real property located in Stoddard County, Missouri more particularly described in the deed attached hereto. The Sewer District only seeks to acquire a right-of-way easement across your property that will consist of 10 feet lying on either side of the centerline of the sewer line as it is initially built. A copy of the map that designates the location of the lines on your property is enclosed. A complete copy of the map that lays out the sewer lines for the district is at Holden Law Office at 718 W. Business Highway 60, Dexter, Missouri. The Sewer District intends on acquiring this property due to the fact that it is necessary to construct and install the lines, pumping facilities and appurtenances essential to complete the sewage collection and treatment system for this area.

Pursuant to Section 523.250 of the Missouri Revised Statutes (copy of which is enclosed), this letter is to provide you with written notice of the intended acquisition. Please be advised that pursuant to Section 523.250 of the Missouri Revised Statutes, you as the property owner have the right to:

- (a) Seek legal counsel at your (the owner's) expense;
- (b) Make a counteroffer and engage in further negotiations;
- (c) Obtain such owner's own appraisal of just compensation;
- (d) Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
- (e) Seek assistance from the office of the ombudsman for property rights created under Section 523.277;
- (f) Contest the right to condemn in the condemnation proceeding; and
- (g) Exercise the rights to request vacation of an easement under the procedures and circumstances provided for in section 527.188.

If you will voluntarily sign the easement please stop by my office within the next ten (10) days. If it is more convenient for a representative to come to your home, please call to make an appointment.

Sincerely,

Natalie D. Riley  
by SNH  
Natalie D. Riley

enclosures

ABANDONED CONTRACTS  
FOR 10 YRS THEN  
they can demand  
easement

## Case #9

### Introductory Stage

Joan Knuth contacted the Office of Property Rights to seek assistance because she received a 60 letter from MoDot notifying her that they intend to acquire land from her place of business on highway 45.

### Negotiation Stage

I met with Joan and explained to her the process of Eminent Domain and that she can give the MoDOT an alternative plan on how the new highway is going to affect her land and place of business. I then met with MoDot to explain the new law to them and present her concerns about how MoDot's plan would negatively affect her business. MoDot then set up a meeting with Joan Knuth and they worked out an agreement and settled the dispute.

### Condemnation Petition and Hearing Stage

There was no filing of a petition because the dispute was negotiated and resolved.



Missouri  
Department  
of Transportation



Elizabeth A. Wright, District Engineer

District 4 - Kansas City Area  
800 NE Colbern Road  
Lee's Summit, MO 64086  
(816) 622-6500  
Fax (816) 622-6323  
Toll free 1-888 ASK MoDOT  
(1-888-ASK-6636)  
www.modot.mo.gov

March 4, 2009

Alan and Joan Knuth  
10809 NW Tom Watson Pkwy.  
Parkville, MO 64152

RE: Platte Co., J4U1108B, Rte. 45, Tr. #114

Dear Mr. and Mrs. Knuth:

This letter is being sent to you pursuant to legislation that became effective August 28, 2006 regarding your property.

The Missouri Highways and Transportation Commission (MHTC) has planned a project to improve Route 45 from Route 9 to just east of Route K in Platte County. The safety and capacity improvements include the widening of Route 45, grading, paving, roundabouts, signals and signing.

The project affects a portion of your property in Platte County, Missouri. The land and/or easement(s) and property rights we intend to acquire from you for the completion of the improvement project are indicated on plan sheet(s) herein provided to you (*note: plans may change*). A MoDOT right of way representative will contact you in the near future regarding the acquisition process. However, we are required by law to inform you of the following:

You have the right to:

- a. Seek legal counsel at your own expense;
- b. Make a counteroffer and engage in further negotiations;
- c. Obtain your own appraisal of just compensation at your own expense (Please be advised, should we be required to file a condemnation petition, this could be done in 60 days. Therefore, if you wish for us to review your appraisal, keep this timeframe in mind);
- d. Have just compensation determined preliminarily by court-appointed condemnation commissioners and, ultimately, by a jury;
- e. Seek assistance from the office of the ombudsman for property rights, as created under Section 523.277 RSMo, at:

*Our mission is to provide a world-class transportation experience that delights our customers and promotes a prosperous Missouri.*



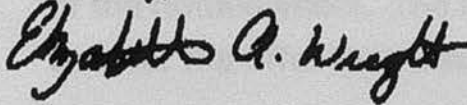
Anthony Martin, Ombudsman for Property Rights  
The State of Missouri  
111 North 7th Street, Suite 934  
St Louis, MO 63101  
314-340-4877 Phone | 314-340-4878 Fax | 866-922-2959 Toll Free

- f. Contest the right to condemn in the condemnation proceeding; and
- g. Exercise the right to request vacation of an easement under the procedures and circumstances provided for in Missouri Statute.

As a potentially impacted landowner connected with our upcoming roadway improvements, please be advised that you and any landowner of property interests being acquired for this project has the right to submit alternate location proposals for a period of up to and including 30 days after receipt of this letter. Proposals for alternate locations on your property shall be in writing and described in such detail that the alternate location is clearly defined. Please submit such proposals to the project manager, Randy Johnson, at 600 NE Colbern Road, Lee's Summit, MO 64086.

Should you have questions regarding the project design, please contact the project manager, Randy Johnson, at 816.622.0483.

Sincerely,



Elizabeth Wright, P.E.  
District Engineer

**SENT VIA CERTIFIED MAIL**

RE: J/Tract Files/Plt/45/J4U1108B/Tr.#114

## Case #10

### Introduction Stage

Westfield Woods Homeowners association received a 60 day letter from the City of Dardenne Prairie notifying them that the city intends to acquire land from their subdivision for the Henning Road Improvement project.

### Negotiation Stage

The president of the home association contacted the office of Ombudsman to seek assistance on the process of Eminent Domain. I met with the homeowners to explain the process and told them they can give an alternative proposal to the city. I then met with the city to explain the new law and to express the concerns of the homeowners. The homeowners submitted a list of proposals to the city to counter the offer that was made to them by the city.

### Condemnation Petition and Hearing Stage

No decision has been made by the city on if they are going to proceed with a condemnation hearing; they are still trying to negotiate a settlement in this case.



DARDENNE



City of Dardenne Prairie  
2032 Hanley Rd.  
Dardenne Prairie, Mo. 63368

March 9, 2009

Westfield Woods Homeowners Association  
3023 Hwy K PMB 189  
O'Fallon, MO 63368

*July 29, 2009  
Delivered to Bruce Taylor  
Kevin Cleary*

Subject: Henning Road Improvement Project  
Common Ground for Westfield Woods, Parcel 05  
Certified Mail # 7008 1140 0002 0458 8217

To Whom It May Concern:

As conveyed in a previous letter, Kevin Cleary of George Butler Associates Inc., the negotiator for the City of Dardenne Prairie, will contact you within the next couple of weeks to discuss the City's planned improvements to Henning Road in the vicinity of your property.

He will show you how 1,513 square feet of Right of Way, 1,544 square feet for a Permanent Drainage Easement and 7,307 square feet of Temporary Construction Easement are required of your property that backs to Henning Road for the road improvements. The improvements include widening the roadway, constructing a new bridge across Dardenne Creek, installing an enclosed storm drainage system and installing a trail. I am authorized to offer you \$1,265.00 as total compensation for the right of way, permanent drainage easement and temporary right to enter your land to make changes necessitated by this project.

This value was established based upon a Real Estate Study of your area and represents just compensation. Please understand that because this purchase is being made with City taxpayers' dollars, we are obligated to pay, but cannot exceed, fair market value. We hope after your review and consideration that you recognize this offer as fair, based on the limitations described above. Enclosed with this letter is a copy of the Payment Estimate used to determine the value, and a copy of one or more Survey Plats showing the location(s) of the right-of-way and/or easement(s) on your property.

At your first meeting with Kevin Cleary, he will provide you in conjunction with a copy of this offer letter, the following documents:

1. An acquisition brochure to explain the process.
2. Survey Plats which indicate how your property is being affected.
3. General Warranty Deeds or other Easement Documents



Mark Reis  
949-3042

4. Escrow Agreements.
5. A copy of engineering drawings which provide more detail on how your property is being affected.
6. A Pro Rata Tax Claim form.

Westfield Woods Homeowners Association  
3023 Hwy K PMB 189  
O'Fallon, MO 63368  
Initial Offer Letter, Parcel 05

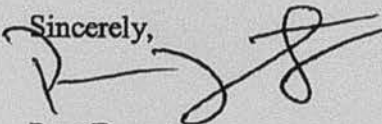
Page 2

You have several rights as the property owner that I want to call to your attention. Most of these will be further explained in the acquisition brochure to be provided by Mr. Cleary. He will also attempt to answer any questions you have.

1. You have the right to seek legal counsel at your expense.
2. You may make a counteroffer and engage in further negotiations.
3. You may obtain your own appraisal of just compensation at your expense.
4. If the City files a condemnation petition for this acquisition, you have the right to have the just compensation for this acquisition determined preliminarily by court-appointed condemnation commissioners and ultimately by a jury. You also have the right to contest the City's right to condemn in the condemnation proceeding.
5. You may seek assistance from the office of the ombudsman for property rights that is being or has been created by the Office of Public Counsel (call 573-751-4857 or see <http://www.mo-opc.org> to contact the Office of Public Counsel).
6. You may exercise the rights to request vacation of an easement under certain procedures and circumstances as provided for by the Missouri Legislature. This applies only to easements abandoned in whole for a period in excess of ten years.

We look forward to the continuation of our roadway improvement program and are grateful for the opportunity to serve you.

Sincerely,

  
Pam Fogarty  
Mayor of Dardenne Prairie

## Conclusion

There are many emotions that occur to a land owner when they receive the 60 day letter notifying them that a condemning authority wants to acquire their land. The power of the condemning authority to use Eminent Domain if negotiations fail has given them much power in the Negotiation stage of acquiring property. This part of the process also has issues of how the property is valued; this also brings some added stress to the land owner. The issue of how to value property creates the most problems in this process. I have seen both sides present their concerns about the value of a particular piece of property, since there is no standard process I feel this is an area that could be looked at in the future.

I have joined the United States Ombudsman Association as a board member and have been in contact with Ombudsman throughout the United States and Canada. I have also joined the National Right of Way Association; I am using the information from these associations to help build a more complete office that will serve the citizens of Missouri when confronted with issues concerning property rights.